IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/09/2002

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THE HONOURABLE MR.JUSTICE P.K.MISRA

W.P.NO.3512 OF 1996

Pallavan Transport Corporation
(Metro) Ltd.
Pallavan Illam
Madras-600 002 .. Petitioner

-Vs-

1. Mrs.Simrose

2. The Special Officer
Residuary Works Transport Department
Fort St. George
Madras

3. Controlling Authority
under the Payment of Gratuity
Act 1972 (Asst. Commissioner
of Labour, Madras)

4. The Appellate Authority
under the Payment of gratuity
Act, 1972 (Deputy Commissioner
of Labour (Appeal), Madras) .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari as stated therein.

For Petitioner : Mr.M.Vijayan
of M/s. King & Partridge

For Respondents : Ms.V.Vaijayanthimala for R1
Ms.N.G.Kalaiselvi, Spl.G.P.
For RR2 to 4

:ORDER

Heard the learned counsel appearing for the parties.
2. This writ petition has been filed by the Pallavan Transport

Corporation (Metro) Limited to quash the order dated 4.9.1994 passed by the Deputy Commissioner of Labour (Appeals), the Appellate Authority under the Payment of Gratuity Act, 1972 in PGA No.66 of 1993, wherein the Appellate Authority has directed the petitioner to pay a sum of Rs.9,072/- to the first respondent taking into account the period of service of the respondent No.1 under the State Government from 7.7.1948 to 30.4.1975.

3. The brief facts are as follows:

The husband of the first respondent was employed under the State Transport Department with effect from 7.7.1948. Subsequently, on formation of the petitioner Corporation in the year 1972, all employees were deputed to the petitioner Corporation. Thereafter, on the basis of option called for from the employees the first respondent's husband was absorbed as a regular employee under the Corporation with effect from 1.5.1975. At that time, the first respondent's husband was also paid pension and Death-cum-Retirement Gratuity by the Government. Subsequently, the first respondent's husband retired from the Corporation with effect from 31.1.1981. He made a claim before the Assistant Commissioner of Labour for payment of Gratuity for the period during which he was in service in the State Transport Department, i.e. from 7.7.1948 to 30.4.1975. The said application was rejected by the Controlling Authority under the Payment of Gratuity Act, 1972. Aggrieved by the said order, the first respondent filed an appeal and the same was allowed by the Appellate Authority, observing that, since the benefits received by the husband of the first respondent were less, he could not have been deprived of the benefits under the Payment of Gratuity Act. Accordingly, the appellate Authority had directed the petitioner to pay a sum of Rs.9,072/- to the first respondent.

4. The learned counsel appearing for the petitioner has submitted that the husband of the first respondent had received whatever benefits that were available under the Rules and he became permanent employee under the Corporation with effect from 1.5.1975. He further submitted that the said period of service rendered by the husband of the first respondent was prior to 30.4.1975 under the State Government in the Transport Department would not be counted for the purpose of computing gratuity. For the above purpose, he has placed reliance on Section 2(e) of the Payment of Gratuity Act. Since the question of payment of gratuity arose on the retirement in the year 1981, the relevant provision containing the Payment of Gratuity Act at the relevant time, i.e. before amendment of the Act by Act No.25/1984, is extracted here-under:

""employee" means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees per mensem, in any establishment, factory mine, oil field, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957."

A perusal of the said provision makes it clear that a person, who was holding a civil post under the Central Government or State Government, was not included within the definition of "employee", as it stood at the relevant time. It is not disputed that the husband of the first respondent was

employed under the Transport Department of the State Government and it must be taken that he was holding a Civil post under the State Government at the relevant time. Since he was not considered to be an employee within the meaning of Section 2(e) of the Act, the period of service rendered by him under the Government cannot be counted for the purpose of payment of Gratuity.

5. The interpretation given by the Appellate Authority relying upon the Rajasthan High Court's decision reported in KALYAN MAL BHANDARI VS. RAJASTHAN STATE TRANSPORT CORPORATION and OTHERS (1986 (52) FLR Page 550) is not acceptable. The decision of the Rajasthan High Court has got no application to the facts and circumstances of the present case. Moreover in the present case, the first respondent's husband had already received the retirement benefits under the relevant Rules by the State Government and was not entitled to receive further benefits for the very same period.

6. For all the reasons stated above, the writ petition is allowed. The order passed by the Appellate Authority is quashed. There shall be no order as to costs.

11.09.2002
Index : yes
Internet : Yes

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P.K.MISRA, J

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